



**THE IEL COLLECTIVE
INAUGURAL CONFERENCE
6 – 7 NOVEMBER 2019
UNIVERSITY OF WARWICK, COVENTRY, UK**

USING THE DUTY TO REGULATE PARADIGM IN THE IIL AND HUMAN RIGHTS DEBATE– A NORMATIVE INSTRUMENT TO FOSTER INTER-DISCIPLINARITY IN THE RESEARCH OF IEL

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Investment law and human rights scholars have widely discussed the interplay between international investment law (IIL) and the protection of human rights through host states' regulation. However, criticism and reform proposals are based on either thorough knowledge and expertise in IIL or in human rights law (HRL), but lack a deeper understanding of the respective other legal system. To shift from cross-disciplinary to an inter-disciplinary research approach, this paper argues that scholars should clearly acknowledge that states have a 'duty to regulate' under human rights treaties and that using it as a conceptual tool in this debate may certainly contribute to reframe its discussion and the reforms proposed to reconcile host states' compliance with both obligations. Taking the investment treaty claims filed by Philip Morris against Australia and Uruguay as case studies, this paper begins exploring in what consist the host states' duty to regulate tobacco corporations' activities in furtherance of the right to health. It then moves to assess the potential for the integration of this paradigm in IIL by analysing respondent states and arbitral tribunals' attempts to reconcile public and private interests during (and ex-post?) the settlement of these investment treaty claims. The adoption of the 'duty to regulate' paradigm in IIL may gradually trigger opting out the so-called 'right to regulate' notion as the predominant paradigm in IIL to highlight the impact of IIL over host states' regulatory autonomy, while articulating it as an expression of host states' human rights obligation to protect alike.